

1 MALIK ALI MUHAMMAD, V-37398

2 CSP, CSATF

3 P.O. Box 5248

4 CORCORAN, CA. 93212

5

6 PETITIONER, PRO SE

7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

11

12 MALIK ALI MUHAMMAD, No C 07-3627 MMC (PR)

13 PETITIONER,

14 MOTION AND DECLARATION

15 VS. FOR APPOINTMENT OF

16 COUNSEL

17 DERRAL ADAMS,

18 RESPONDENT.

19

20 TO THE HONORABLE UNITED STATES DISTRICT COURT

21 FOR THE NORTHERN DISTRICT OF CALIFORNIA;

22

23 PETITIONER, MALIK ALI MUHAMMAD, HEREBY MOVES

24 FOR AN ORDER APPOINTING COUNSEL TO REPRESENT HIM

25 IN THIS PROCEEDING, PURSUANT TO THE PROVISIONS OF

26 18 U.S.C. § 3006A (a) (2) (B), THIS COURT'S CRIMINAL

27 JUSTICE ACT PLAN, GENERAL ORDER 2, PART I-A, AND

28 THE FOURTEENTH AMENDMENT OF THE UNITED STATES

FILED

FEB 27 PM 1:29

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 CONSTITUTION. PETITIONER REQUIRES THE ASSISTANCE OF
 2 LEGAL COUNSEL TO COLLECT EVIDENCE (I.E. TRANSCRIPTS,
 3 DOCUMENTS, ETC.) AND TO ANALYZE AND PRESENT THE
 4 MULTIPLE COMPLEX ISSUES THAT ARE SET FORTH WITHIN
 5 THE ACCOMPANYING PETITION.

6

7 BACKGROUND

8

9 PETITIONER IS A PRISONER AT THE CALIFORNIA
 10 SUBSTANCE ABUSE TREATMENT FACILITY AND STATE
 11 PRISON IN CORCORAN, CALIFORNIA. AS ALLEGED WITHIN
 12 THE ACCOMPANYING PETITION FOR WRIT OF HABEAS
 13 CORPUS, PETITIONER IS BEING HELD IN VIOLATION OF
 14 RIGHTS GUARANTEED TO HIM PURSUANT TO THE 1ST, 5TH,
 15 6TH AND 14TH AMENDMENTS TO THE UNITED STATES
 16 CONSTITUTION; NUMEROUS ADDITIONAL U.S. CONSTITUTIONAL
 17 PROVISIONS AND A FAILURE TO RECEIVE EFFECTIVE
 18 ASSISTANCE OF APPELLATE COUNSEL.

19

20 PETITIONER ALLEGES THAT HE POSSESSES MINIMAL
 21 TRAINING AND EXPERIENCE TO ASSIST HIM IN THE
 22 COMPREHENSION AND PRESENTATION OF THE COMPLEX
 23 CONSTITUTIONAL ISSUES THAT ARE PRESENT IN THIS
 24 MATTER AND IS UNABLE TO ADEQUATELY REPRESENT
 25 HIS OWN INTEREST OR PROVIDE PROPER ASSISTANCE
 26 TO THE COURT.

27

28 PETITIONER FURTHER ALLEGES THAT HE IS UNABLE TO

1 RETAIN COUNSEL AS HE HAS BEEN INCARCERATED SINCE
 2 FEBRUARY 23, 2004 AND HAS NO INCOME AND MINIMAL
 3 ASSETS.

4
 5 THEREFORE, PETITIONER RESPECTFULLY REQUEST THAT
 6 THIS COURT APPOINT COUNSEL ON THE GROUNDS THAT
 7 JUSTICE AND DUE PROCESS SO REQUIRE.

8
 9 POINTS AND AUTHORITIES

10
 11 PURSUANT TO 18 U.S.C. § 3006A(a)(2)(B) AND THIS
 12 COURT'S CRIMINAL JUSTICE PLAN, PART I-A, THE COURT
 13 SHOULD APPOINT COUNSEL TO REPRESENT AN INDIGENT
 14 PRISONER APPLYING FOR HABEAS CORPUS RELIEF, EVEN
 15 PRIOR TO ANY DETERMINATION REGARDING AN
 16 EVIDENTIARY HEARING, "IF THE INTEREST OF JUSTICE
 17 REQUIRES." WEYBANDT V LOOK, 718 F.2d 952, 954
 18 (9TH CIR. 1983). MOREOVER, APPOINTMENT OF COUNSEL IS
 19 REQUIRED "WHEN THE COMPLEXITIES OF THE CASE ARE SUCH
 20 THAT DENIAL OF COUNSEL WOULD AMOUNT TO A DENIAL
 21 OF DUE PROCESS." BROWN V UNITED STATES, 623 F.2d 54, 61
 22 (9TH CIR. 1980)

23
 24 "IN DECIDING WHETHER TO APPOINT COUNSEL IN A
 25 HABEAS PROCEEDING, THE DISTRICT COURT MUST EVALUATE
 26 THE LIKELIHOOD OF SUCCESS ON THE MERITS AS WELL AS
 27 THE ABILITY OF THE PETITIONER TO ARTICULATE HIS
 28 CLAIMS PRO SE IN LIGHT OF THE COMPLEXITY OF THE

1 LEGAL ISSUES INVOLVED." WEYLANDT v LOOK, SUPRA,
 2 TIB F. 2D AT 952, CITATION OMITTED. THE INITIAL
 3 EVALUATION OF PETITIONER'S CLAIMS SHOULD BE DIRECTED
 4 INERELY TOWARD DETERMINING WHETHER THEY ARE
 5 "NON-TRIVIALS". REESE v ARMSTRONG, 902 F. 2D 701,
 6 702 (8TH CIR. 1990). THE COURT SHOULD THEN CONSIDER
 7 THE CLAIMS IN LIGHT OF THE PETITIONER'S CIRCUM-
 8 STANCES IN DETERMINING "WHETHER THE NATURE OF
 9 THE LITIGATION WILL MAKE THE APPOINTMENT OF COUNSEL
 10 OF BENEFIT TO THE LITIGANT AND THE COURT. [CITATION]"
 11 IBID.

12
 13 BASED UPON THE ABOVE STATED STANDARDS, APPOINT-
 14 MENT OF COUNSEL IS APPROPRIATE AND NECESSARY IN
 15 THE PRESENT MATTER. (SEE ATTACHED DECLARATION)

16
 17 FIRST, IT MUST BE NOTED THAT AN ORDER TO SHOW
 18 CAUSE IN THE ABOVE-ENTITLED MATTER WAS ISSUED
 19 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
 20 DISTRICT OF CALIFORNIA BY THE HONORABLE MARYNE M. CHESNEY,
 21 UNITED STATES DISTRICT JUDGE ON OCTOBER 23, 2001.

22
 23 SECONDLY, ON FEBRUARY 20, 2008, PETITIONER RECEIVED
 24 (ACTUAL) SERVICE OF RESPONDENT'S MOTION TO DISMISS
 25 PETITION, AS PROCEDURALLY UNTIMELY. THEREFORE,
 26 IN ADDITION TO THE EIGHT COMPLEX CONSTITUTIONAL
 27 ISSUES OF FEDERAL CONSTITUTIONAL LAW THAT ARE
 28 SET FORTH WITHIN THE PETITION, PETITIONER MUST

1 ALSO RESPOND TO THE RESPONDENT'S MOTION TO DISMISS
2 THAT IS BASED UPON COMPLICATED PROCEDURAL MANDATES

3
4 FURTHERMORE, THE NEED AND THE COMPLEXITY OF
5 THE ISSUES TAKE ON PARTICULAR SIGNIFICANCE, GIVEN
6 PETITIONER'S CURRENT SENTENCE OF TEN (10) YEARS
7 IMPRISONMENT WHICH IS PREDICATED UPON THE
8 CONVICTION TO BE CONSIDERED IN THIS MATTER.

9 HITCHCOCK v EYMAN, 418 F.2d 1245, 1246 (8th Cir. 1969)

10
11 UNDER THE CIRCUMSTANCES, IT WOULD BE FUNDA-
12 MENTALLY UNFAIR FOR THIS PROCEEDING TO CONTINUE
13 IN THE ABSENCE OF REPRESENTATION BY COURT-APPOINTED
14 COUNSEL. ALTERNATIVELY, IF APPOINTMENT OF COUNSEL
15 IS NOT REQUIRED BY DUE PROCESS, THE ISSUES PRE-
16 SENTED "ARE SUFFICIENTLY COMPLEX AND NUMEROUS
17 THAT APPOINTMENT OF COUNSEL WOULD BENEFIT BOTH
18 [PETITIONER] AND THE COURT BY ALLOWING COUNSEL TO
19 DEVELOP [PETITIONER'S] ARGUMENTS AND FOCUS THE
20 COURT'S ANALYSIS." BATTLE v ARMONTROUT, *supra*,
21 902 F.2d at 702.

22 CONCLUSION

23
24 FOR THE FOREGOING REASONS, PETITIONER RESPECT-
25 FULLY REQUEST THAT HIS MOTION FOR APPOINTMENT OF
26 COUNSEL BE GRANTED.

27
28 DATED: FEBRUARY 22, 2008

RESPECTFULLY SUBMITTED,
Mark Ali Muhammad
PETITIONER, PRO SE

DECLARATION OF PETITIONER MALIK ALI MUHAMMAD

I, MALIK ALI MUHAMMAD DECLARE:

1. I AM THE PETITIONER IN THIS ACTION.

2. I AM PRESENTLY INCARCERATED AT THE
CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY
AND STATE PRISON IN CORCORAN, CALIFORNIA.

3. I HAVE BEEN INCARCERATED CONTINUOUSLY
SINCE FEBRUARY 23, 2004.

4. I HAVE NOT BEEN GAINFULLY EMPLOYED
SINCE OCTOBER 2002.

5. THE ESTIMATED VALUE (TOTAL) OF MY PRESENT
ASSETS IS LESS THAN \$1200. (SEE EXHIBIT 1.)

6. I HAVE NO IMMEDIATE FAMILY MEMBERS TO
PROVIDE FINANCIAL ASSISTANCE TO ME.

7. ON FEBRUARY 19, 2008, I WAS INFORMED BY CDC
OFFICIALS THAT DUE TO PAST AND PRESENT HEALTH
PROBLEMS AND COMPLICATIONS, (I.E. PROSTATE CANCER,
CHRONIC BRONCHITIS, ASTHMA, ALLERGIES, ETC.), I WILL
BE TRANSFERRED TO ANOTHER FACILITY WITHIN THE
VERY NEAR FUTURE. BE ADVISED THAT UPON TRANSFER,

1 PETITIONER WILL BE ASSIGNED TO "ORIENTATION" STATUS,
2 HENCE, PRECLUDED FROM PRIVILEGES SUCH AS LIBRARY
3 ACCESS, ETC. ADDITIONALLY, THERE IS A SUBSTANTIAL
4 LIKELIHOOD THAT PETITIONER WILL BE DEPRIVED OF
5 THE POSSESSION OF ALL PERSONAL PROPERTY
6 DURING SUCH PERIOD, INCLUDING BUT NOT LIMITED
7 TO LEGAL MATERIAL AND FILES AND ALL OTHER
8 MISCELLANEOUS ITEMS SUCH AS PENS, PAPER, STAMPS,
9 ENVELOPES, ETC.

10
11 I DECLARE UNDER PENALTY OF PERJURY THAT THE
12 FOREGOING IS TRUE AND CORRECT TO THE BEST OF
13 MY KNOWLEDGE.

14
15 EXECUTED ON FEBRUARY 22, 2008, AT CORCORAN, CA.
16
17

18 *Malik Ali Muhammad*
19 MALIK ALI MUHAMMAD
20 PETITIONER, PRO SE
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EPORT ID: TS3030 .701

REPORT DATE: 02/19/08

PAGE NO: 1

CALIFORNIA DEPARTMENT OF CORRECTIONS
 SATF/SP AT CORCORAN
 INMATE TRUST ACCOUNTING SYSTEM
 INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: JAN. 01, 2008 THRU FEB. 19, 2008

ACCOUNT NUMBER : 037398

BED/CELL NUMBER: FA01T1ZZ00000006L

ACCOUNT NAME : MUHAMMAD, MALIK

ACCOUNT TYPE: I

PRIVILEGE GROUP: A

TRUST ACCOUNT ACTIVITY

* RESTITUTION ACCOUNT ACTIVITY

DATE SENTENCED: 06/07/04

CASE NUMBER: 144082

COUNTY CODE: ALA

FINE AMOUNT: \$ 800.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT.	BALANCE
1/01/2008		BEGINNING BALANCE		682.80
2/08/08	SU03	SYS UPDATE - POS	16.80-	666.00

* THIS STATEMENT DOES NOT REFLECT THE ADMINISTRATIVE FEE CHARGE THAT *
 * IS EQUAL TO TEN PERCENT OF THE RESTITUTION AMOUNT COLLECTED. *

<< NO ACCOUNT ACTIVITY FOR THIS PERIOD >>

TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
0.00	0.00	0.00	0.00	0.00	0.00

CURRENT
 AVAILABLE
 BALANCE

0.00

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, MALIK ALI MUHAMMAD, declare:

I am over 18 years of age and a party to this action. I am a resident of C SATF, CSP

Prison,
in the county of KINGS,

State of California. My prison address is: P.O. BOX 5248, A-1 2206L,
CORCORAN, CA. 93212

On FEBRUARY 24, 2008
(DATE)

I served the attached: MOTION AND DECLARATION FOR APPOINTMENT
OF COUNSEL (NO. C 07-3627 MMC (PR))
(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVE., SUITE 11000
SAN FRANCISCO, CA. 94102
ATTN: MS. MICHELLE J. SWANSON

I declare under penalty of perjury under the laws of the United States of America that the foregoing

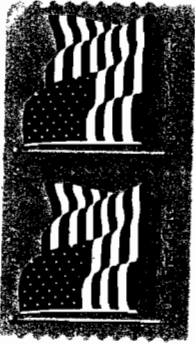
is true and correct.

Executed on FEB. 24 2008
(DATE)

Malik Ali Muhammad
(DECLARANT'S SIGNATURE)

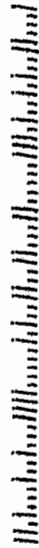
CSATF/SP

MALIK ALI MUHAMMAD, V-37398
FACILITY A, BLDG 1, 2206L
P.O. BOX 5248
CORCORAN, CA. 93212



OFFICE OF THE CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA. 94102

9410233551-0004



LEGAL MAIL - CONFIDENTIAL